

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ALVIN LEE MCNEILL, SR.,	:	CIVIL NO. 4:07-CV-0403
	:	
Plaintiff	:	(Judge McClure)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
ADMINISTRATOR HARRELL WATTS,	:	
et al.,	:	
	:	
Defendants	:	

REPORT AND RECOMMENDATION

The plaintiff, a prisoner proceeding *pro se*, commenced this action by filing a complaint on March 2, 2007. On September 17, 2007, the plaintiff filed an amended complaint.

On January 25, 2008, the defendants filed a motion to dismiss or, in the alternative, for summary judgment. The defendants were granted a number of extensions of time to file a brief in support of their motion. Before the defendants filed a brief in support of their motion, the plaintiff filed documents in opposition to the defendants' motion. *See Docs.*

51-53 & 59-72.¹ On February 15, 2008, the defendants filed a brief in support of their motion to dismiss or for summary judgment, a statement of material facts and documents in support of their motion.

Although the plaintiff filed a response to the defendants' motion to dismiss or for summary judgment before the defendants filed their brief in support of their motion, the plaintiff did not file a brief in opposition to the motion after the defendants filed a brief in support of their motion. Also, the plaintiff did not file a response to the defendants' statement of material facts. Pursuant to Local Rule 56.1, any material facts set forth in the defendants' statement of material facts are deemed to be admitted unless controverted by the response to the defendants' statement of material facts filed by the plaintiff.

By Order of April 11, 2008 (Doc. 83), it was ordered that the plaintiff file a brief in opposition to the defendants' motion to dismiss or for summary judgment and that

1. The plaintiff also filed a motion for summary judgment. By an Order dated March 7, 2008, the plaintiff's motion for summary judgment was deemed withdrawn based on the plaintiff's failure to file a brief in support of that motion.

the plaintiff file a response, in accordance with Local Rule 56.1, to the defendants' statement of material facts. The plaintiff was given a deadline of April 28, 2008 to file.

By Order of May 29, 2008 (Doc. 86) because the plaintiff had not filed a brief or statement of material facts, the court again ordered that a brief and a statement of material facts be filed. The deadline set by this later order was June 13, 2008. The order contained this language:

If the plaintiff does not file another brief in opposition and a response to the defendants' statement of material facts we will recommend that this action be dismissed pursuant to Fed.R.Civ.P. 41(b), by application of the factors in *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d 863, 868 (3d Cir. 1984), on the basis that the plaintiff has abandoned this action now that he has been released from custody.

(Doc. 86).

The plaintiff has not filed any additional papers, and it is recommended accordingly pursuant to Rule 41(b) that this action be dismissed.

It is recommend that this action be dismissed pursuant to Rule 41(b).

/s/ J. Andrew Smyser

J. Andrew Smyser
Magistrate Judge

Dated: July 9, 2008.